580.

SUPREME COURT OF THE UNITED STATES.

No. 97.

JAMES BUCKLEY, CLAIMANT OF THREE BALES AND EIGHT CASES, &c., PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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J. & G. S. GIDEON, printers.

UNITED STATES, *eastern district of Pennsylvania, sct:*

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

[SEAL]

Because that, in the record and process, and also in the rendering of judgment in a suit before you, between James Buckley, claimant of three bales and eight cases of cloths, imported in the ship Franklin, plaintiff, and the United States of America, defendants, in a plea by way of information for forfeiture, a manifest error has entervened to the great damage of the said James Buckley, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf; you are hereby commanded, that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ; so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon, what of right ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this twenty-seventh day of November, A. D. one thousand eight hundred and forty-three, and in [the] sixty-eighth year of the independence of the said United States.

FRA. HOPKINSON, *Clerk Circuit Court.*

Allowed: ARCH'D RANDALL.

UNITED STATES, *eastern district of Pennsylvania, sct:*

To the United States of America.

Whereas by a writ of error, issuing out of the Supreme Court of the United States, directed to the judges of the circuit court of the United States, holden in and for the eastern district of Pennsylvania, in the third circuit, wherein James Buckley, claimant of three bales and eight cases of cloths, imported in the ship Franklin, is the plaintiff, the said judges are directed to send the record and process of a certain suit, with all things concerning them, so that the same may be had before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of National Government, in which suit the said James Buckley, claimant of three bales and eight cases of cloths, imported in the ship Franklin, is the original plaintiff, and you, the said The United States of America, are the defendants, in a plea by way of information for forfeiture, that the record and process aforesaid being inspected, they, the said chief justice and associate justices, may cause to be done there-

upon, what of right ought to be done; and the said James Buckley, the plaintiff in error, having made an assignment of errors, and given good and sufficient security that the plaintiff in error shall well and truly prosecute his said writ of error to effect, and answer all such costs as upon an affirmance of the judgment of the said circuit court may be adjudged to the defendants in error; you are hereby cited to appear (if you see cause) at the said Supreme Court, at the time and place aforesaid, to answer to the said writ of error, and the errors assigned by the said James Buckley, the plaintiff in error.

Given under my hand and seal, this twenty-seventh day of November, one thousand eight hundred and forty-three.

ARCH'D RANDALL, [SEAL.]

Pleas before the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit:

It is thus contained—

Whereas by a writ of error, issuing out of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, directed to the judge of the district court of the United States, holden in and for the eastern district of Pennsylvania, wherein James Buckley, claimant of three bales and eighth cases of cloths, imported in the ship Franklin, was the plaintiff, the said judge was directed to send the record and process of a certain suit, with all things concerning them, so that the same might be had before the judges of the said circuit court, on the eleventh day of April then next, at the city of Philadelphia, in which suit the said James Buckley was the original defendant, and the United States of America were the plaintiffs, in a plea by way of information for forfeiture, &c., that the record and process aforesaid being inspected, they, the said judges of the said circuit court, might cause to be done thereupon, what of right ought to be done. And whereas, the said judge of the said district court did, thereupon, make return to the said writ of error, and did send the record and process aforesaid, so that the same were had before the judges of the said circuit court, on the day and at the place aforesaid; which said record and process are in the words following, to wit:

In the district court of the United States of America, in and for the eastern district of Pennsylvania.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

Be it remembered that, on this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and forty, into the district court of the United States of America, in and for the eastern district of Pennsylvania, comes John M. Reed, attorney of the said United States of America, and prosecuting in their name and on their behalf, and gives the said court here to understand and be informed that, on the twenty-fourth day of June, in the year aforesaid, at the city of Philadel-

phia, in the eastern district of Pennsylvania, and within the jurisdiction of this court, the following goods, wares, and merchandize, to wit:

Three bales of cloths, marked P. B., 810, 811, 812, and eight cases of cloth, marked P. B., 813, 814, 815, 816, 817, 818, 819, 820, were seized on land by Calvin Blythe, esq., collector of the customs of the port and district of Philadelphia, in the said eastern district of Pennsylvania, and are now in his custody, as being forfeited, for the causes hereinafter mentioned, to wit:

1. That the aforesaid goods, wares, and merchandize are of the growth, produce, and manufacture of some foreign place or country, to the said attorney unknown; and were heretofore, to wit, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and thirty-nine, brought or imported in a ship or vessel, being a ship called the Franklin, from a foreign port or place, to wit, the port of Liverpool, to the port of Philadelphia, in the collection district of Philadelphia, in the eastern district of Pennsylvania, which said goods, wares, and merchandize are subject to the payment of duties to the United States, on being brought and imported as aforesaid.

That an entry of the aforesaid goods, wares, and merchandize, duly signed, was, at the time of said importation thereof, made at the office of the collector of the customs of the said port and district of Philadelphia; and that, on such entry being made as aforesaid, an invoice of the goods, wares, and merchandize, included in such entry, was produced, and left with the said collector of the customs of the port and district of Philadelphia.

And the said attorney further avers, that the aforesaid goods, wares, and merchandize, which were so entered as aforesaid, and of which an invoice was so produced and left as aforesaid, were not invoiced according to the actual cost thereof at the place of exportation, but, on the contrary, were in fact invoiced at less sums than the actual cost thereof at the place of exportation, with design to evade the duties thereupon, or some part thereof, against the form of the act of Congress in such case made and provided.

2. That the aforesaid goods, wares, and merchandize, being subject to the payment of ad valorem duties to the United States, an entry thereof, duly signed, was, at the time of the importation thereof, made at the office of the collector of the customs of the said port and district of Philadelphia, and that, on such entry being made as aforesaid, an invoice of the goods, wares, and merchandize, included in such entry, was produced and left with the said collector of the customs of the said port and district of Philadelphia.

And the said attorney further avers, that the said invoice, so produced and left as aforesaid, was made up with intent, by a false valuation, to evade and defraud the revenue of the United States, against the form of the act of Congress in such case made and provided.

3. That the aforesaid goods, wares, and merchandize, being subject to the payment of ad valorem duties to the United States, an entry thereof, duly signed, was, at the time of the importation thereof, made at the of-

fice of the collector of the customs of the said port and district of Philadelphia; and that, on such entry being made as aforesaid, an invoice of the goods, wares, and merchandize, included in the said entry, was produced and left with the said collector of the customs of the said port and district of Philadelphia.

And the said attorney further avers, that all and each of the said several packages contained in the said entry so made, and in the invoice so produced and left as aforesaid, in which the aforesaid goods, wares, and merchandize were so imported and entered as aforesaid, was made up with intent, by a false valuation, to evade and defraud the revenue of the United States, against the form of the act of Congress in such case made and provided.

4. That the aforesaid goods, wares, and merchandize, being composed wholly or in part of wool or cotton, an entry thereof, duly signed, was, at the time of the importation thereof, made at the office of the collector of the customs for the port and district of Philadelphia; and that, on the said entry being made as aforesaid, an invoice of the said goods, so as aforesaid composed wholly or in part [of] wool or cotton, included in such entry, was produced, and left with the said collector of the customs of the said port and district of Philadelphia.

And the said attorney further avers, that all and each of the several packages in the said invoice so produced and left as aforesaid, and in the said entry so much as aforesaid, in which the aforesaid goods were so imported as aforesaid, were made up with intent to evade and defraud the revenue of the United States, against the form of the act of Congress, in such case made and provided.

By reason of all which the premises, and the acts of Congress in this behalf made and provided, the said goods, wares, and merchandize, have become and are forfeited.

Wherefore, the said attorney prays the aid and the advice of the said court here in the premises, and due process of law for the condemnation thereof.

JOHN M. READ,
United States attorney for the eastern district of Pennsylvania.

THE UNITED STATES OF AMERICA,
vs.
THREE BALES OF CLOTHS, marked P. B., 810, 811, 812; and 8 CASES OF CLOTH, marked P. B., 813, 814, 815, 816, 817, 818, 819, 820, imported in the ship Franklin, from Liverpool.

D. C. U. S. A., sur. libel and information, filed Sept. 28th, 1840.

And now, the seventh day of October, 1840, comes James Buckley, and claims as his own property, the goods, wares, and merchandise in the said libel and information mentioned, to wit: Three bales of cloths, marked P. B., 810, 811, 812; and 8 cases of cloths, marked P. B., 813, 814, 815, 816, 817, 818, 819, 820.

And the said James Buckley alleges, that at the time of the seizure

aforesaid, he was and still is the true, sole, and lawful owner of, and proprietor bona fide of the said goods hereinbefore claimed by him; and of this he is ready to make due proof as the said court shall direct.

JAMES BUCKLEY.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James Buckley, the above claimant, appeared before me, this seventh day of October, 1840, and being by me duly sworn, did depose and say, that he had read the foregoing claim, and knew the contents thereof, and that the same was true to the best of his knowledge, information, and belief.

GEO. W. MORTON, *U. S. Com'r.*

The figures 39 erased, and 40 interlined, before being sworn to.

GEO. W. MORTON, *U. S. Com.*

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Frederick J. Betts, clerk of the circuit court of the United States, for the southern district of New York, do hereby certify, that George W. Morton, whose name, in his own proper handwriting, is subscribed to the jurata to the annexed claim, was at the time of signing the same, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, under and by virtue of the acts of Congress, in such case made and provided.

In testimony whereof, I have hereunto subscribed my name, and have affixed the seal of the said circuit court, this seventh day of October, in the year of our Lord one thousand eight hundred and forty, and of the independence of the United States the sixty-fifth.

[L. S.]

FRED. J. BETTS, *Clerk.*

UNITED STATES OF AMERICA
vs.
CLOTHS, &c., seized, imported per ship Franklin, P. B. & Co., JAMES BUCKLEY, claimant.

D. C. U. S., E. D. P.

And the said claimant, by his attorney, whose name is hereto subscribed, comes into the said district court here, and as to so much of the said information as relates to the goods, wares, and merchandise in his claim mentioned, whereof a particular specification is thereto annexed, he says, that the same ought not to be decreed to be forfeited, because he says, that the said several causes of forfeiture alleged in the said information, in manner and form as the same are therein alleged, are wholly untrue; and of this he puts himself upon the country, &c.

Wherefore, he prays, that the said goods, wares, and merchandise, whereof he is claimant, as aforesaid, may be restored to him, and that he may be hence dismissed with his reasonable damages and costs, &c.

B. GERHARD, *for claimant.*

May 11th, 1842.

And the United States do the like, &c. Therefore, let a jury thereupon come before the judge of the said court, at a session of the same court, to be holden at Philadelphia aforesaid, on the twenty-first day of November next, by whom, &c., who neither, &c., to recognise, &c., because as well, &c., the same day is there given to the parties aforesaid, &c.

Afterwards, to wit, on the thirtieth day of December, A. D. 1842, at a session of the same court, holden at Philadelphia aforesaid, before the judge aforesaid, come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury aforesaid, being called, likewise come, to wit: 1. Aaron S. Lippincott; 2. Benjamin Franklin; 3. David S. Freeland; 4. John Hassinger; 5. William L. Rehn; 6. Asher M. Howell; 7. William Riehle, jun.; 8. Edmund Lewis; 9. Oliver Fuller; 10. Theodore C. Heyl; 11. Andrew Kilpatrick; 12. John Hall, sen., who are duly empannelled, returned, elected, tried, and sworn, or affirmed, to speak the truth of the matter within contained.

Before the jurors aforesaid withdrew from the bar of the court, the said claimant, by his counsel, tendered to the court here the following bill of exceptions, which was by the court signed and sealed in form following, to wit:

The counsel of the plaintiffs, to maintain the said issue on their part produced as a witness, Patrick Brady, the consignee of the goods in question, by whom the same had been offered for entry at the custom house of the port of Philadelphia, on the 16th of August, 1839, who being shewn a bill of lading, dated 8 June, 1839, for three bales, marked P. B. 810 to 812, and eight cases marked P. B., 813 to 820, deposed that he believed it to be the bill of lading of the goods in controversy, and that he had received with it a letter from the claimant, which, after diligent search he was unable to find. Whereupon, the said bill of lading, and the invoice and entry of the said goods at the said custom house, and affidavit of the claimant annexed to the said invoice, taken at Liverpool, on the 8th of June, 1839, were read in evidence, (prout bill of lading, entry, invoice and affidavit,) and the said plaintiff, further proved by the testimony of Richard L. Howell, deputy collector of the said port, that a certain direction upon the said invoice and entry, ordering the said goods to the custom house for examination and for appraisement there, was in the handwriting of John Kern, deceased, who, at the time of the said importation and entry, was a deputy collector of the said port; and thereupon the counsel of the plaintiffs offered as a witness Thomas Stewart, to prove an appraisement of the said goods made by him as one of the official appraisers of the said port, in pursuance of the said directions of the deputy collector, to which testimony the counsel of the claimant objected, for the reason that the said appraisement was not made in the presence of the court and jury. But the court admitted the said testimony, to the admission whereof the counsel of the claimant excepted; whereupon the said witnesses deposed, that from the year 1818 to the year 1841, he was one of the appraisers of the customs for the said port, and in this capacity, together with Henry Simpson, the

other appraiser, examined and appraised the said goods, and that an appraisement produced and exhibited to him was their appraisement thereof, which, as regarded the witness was made by him carefully, between the 3d and 25th day of September, 1839. Being cross examined, he said that this appraisement was a duplicate; that another paper had, as he believed, been made out which corresponded with this, but both were made during the time of their examination of the goods, and if there was any difference between them, the paper produced was the more correct. The difference, if there was any, consisted only in the correction of some blot or error; that the appraisement produced, was an original paper, that it was the one from which the appraisement was registered in the appraisement book of the custom house, and was the only one which had been officially returned or reported by the appraisers to the collector, of that appraisement. Whereupon the counsel of the United States offered the said appraisement in evidence, but the counsel of the claimant objected to the admission thereof. The court overruled the said exceptions and admitted the same in evidence, to which decision the counsel of the claimant except. The counsel of the United States thereupon offered as a witness, Felix A. Huntingdon, to prove that he was, at the time of the importation in question, and had been for many years, an importer of similar goods, and had been much in England as a purchaser of such goods, and was an experienced judge of their value, and that he had examined the goods in question; and to prove what was, in his belief, the value in the British market of the said goods, at the date of the invoice upon which they had been entered. Whereupon the counsel of the claimant objected to the admission of the said evidence, and being asked to state on what ground the objection was made, answered on the ground that the appraisement was not made in the presence of the jury. Whereupon the court admitted the said testimony, to which decision, the counsel of the claimants excepted, and the said testimony was given by the witness. John Siter, an importer of similar goods, who had been in England at or about the date of the said invoice, was then examined, and testified that he had examined the the said goods, and proved what was, in his belief, their value in the British market at the date of the said invoice. Several other witnesses, namely, Samuel Ross, A. J. Lewis, Louis C. Callet, Benjamin W. Tingley and Charles W. Churchman, importers, and Henry Simpson, the said appraiser of the customs, were examined, on the part of the United States, who severally testified to their respective means of knowledge of the value of British cloths and cassimeres, in the year 1839, and who, having examined and appraised the goods in question, testified to their belief of the actual value thereof in the British market at the date of the said invoice. Of these witnesses, Samuel Ross and A. J. Lewis were testified to have examined the goods under an appeal from the aforesaid official appraisement of the appraisers of the customs, which appeal had been made by the claimant according to the provisions of the act of Congress in that behalf provided. The counsel of the United States after giving the said appeal in evidence, with the affidavit of the

claimant, (prout appeal and claimant) offered to read in evidence the affidavit of the said Samuel Ross and A. J. Lewis, taken by them on the 22d of June, 1839, previously to entering upon the performance of their duty as appraisers under the said appeal, to the admission of which affidavit the counsel of the claimants objected. But the court overruled the said objection, and admitted the same in evidence, to the admission whereof the counsel of the claimant excepted, whereupon the said affidavit was read in evidence, (prout affidavit;) afterwards the counsel of the United States gave in evidence the appraisement of the said Ross and Lewis, made under the said appeal, according to the testimony of the several witnesses on behalf of the United States, who had thus examined and appraised the said goods, the value thereof exceeded the price as stated in the invoice in the following proportions respectively, viz: according to the appraisement of the official appraisers, Stewart and Simpson, and of the witnesses, Huntingdon and Callet, 16 per cent.; according to the appraisement of the witnesses, Ross and Lewis, made upon the said appeal, 17 per cent.; and according to the testimony of the witnesses, Siter, Tingley and Churchman, 22 per cent., above the price in the said invoice. Before the examination of each of the said witnesses, an objection was made by the counsel of the claimant to the admission of his testimony, on the ground that his appraisement had not been made in the presence of the jury. The objection was in each case overruled, and an exception was in each case taken by the claimant's counsel to the admission of the testimony.

The counsel of the United States also gave in evidence an affidavit of the claimant, taken at Dobeross, in Saddleworth, on the 15th day of February, 1840, and an invoice thereto annexed, dated Hollingrove, near Leeds, May 28th, 1839, purporting to be another invoice of the goods in question, in which they were stated to have been *purchased* by the claimant on that day from William Buckley & Co., (prout affidavit and invoice.) This affidavit and invoice were proved to be endorsed in the handwriting of the said deceased deputy collector Kern, and it was in evidence that the claimant's attorney and counsel before the issuing of a commission to take testimony in Saddleworth, hereinafter mentioned, had applied on the claimant's behalf to the attorney of the United States for, and had received from him, a copy of the same.

The counsel of the United States produced the invoices of two importations, one made into the port of Philadelphia, the other into the port of New York, of goods exported from England by the claimant, whose affidavit was in each case annexed thereto, dated respectively 23 May, 1839, and 12 June, 1839. These affidavits, made in pursuance of the 4th section of the act of Congress of 1 March, 1823, described the goods in the respective invoices as having been purchased by him, and he deposed to their actual cost. The said invoices and affidavits, and the entries upon which they were respectively entered, were verified, and the signature to each affidavit was proved to be in the claimant's handwriting. The said invoices and affidavits, with the respective entries, were thereupon offered in evidence by the counsel of the United

other appraiser, examined and appraised the said goods, and that an appraisement produced and exhibited to him was their appraisement thereof, which, as regarded the witness was made by him carefully, between the 3d and 25th day of September, 1839. Being cross examined, he said that this appraisement was a duplicate; that another paper had, as he believed, been made out which corresponded with this, but both were made during the time of their examination of the goods, and if there was any difference between them, the paper produced was the more correct. The difference, if there was any, consisted only in the correction of some blot or error; that the appraisement produced, was an original paper, that it was the one from which the appraisement was registered in the appraisement book of the custom house, and was the only one which had been officially returned or reported by the appraisers to the collector, of that appraisement. Whereupon the counsel of the United States offered the said appraisement in evidence, but the counsel of the claimant objected to the admission thereof. The court overruled the said exceptions and admitted the same in evidence, to which decision the counsel of the claimant except. The counsel of the United States thereupon offered as a witness, Felix A. Huntingdon, to prove that he was, at the time of the importation in question, and had been for many years, an importer of similar goods, and had been much in England as a purchaser of such goods, and was an experienced judge of their value, and that he had examined the goods in question; and to prove what was, in his belief, the value in the British market of the said goods, at the date of the invoice upon which they had been entered. Whereupon the counsel of the claimant objected to the admission of the said evidence, and being asked to state on what ground the objection was made, answered on the ground that the appraisement was not made in the presence of the jury. Whereupon the court admitted the said testimony, to which decision, the counsel of the claimants excepted, and the said testimony was given by the witness. John Siter, an importer of similar goods, who had been in England at or about the date of the said invoice, was then examined, and testified that he had examined the the said goods, and proved what was, in his belief, their value in the British market at the date of the said invoice. Several other witnesses, namely, Samuel Ross, A. J. Lewis, Louis C. Callet, Benjamin W. Tingley and Charles W. Churchman, importers, and Henry Simpson, the said appraiser of the customs, were examined, on the part of the United States, who severally testified to their respective means of knowledge of the value of British cloths and cassimeres, in the year 1839, and who, having examined and appraised the goods in question, testified to their belief of the actual value thereof in the British market at the date of the said invoice. Of these witnesses, Samuel Ross and A. J. Lewis were testified to have examined the goods under an appeal from the aforesaid official appraisement of the appraisers of the customs, which appeal had been made by the claimant according to the provisions of the act of Congress in that behalf provided. The counsel of the United States after giving the said appeal in evidence, with the affidavit of the

claimant, (prout appeal and claimant) offered to read in evidence the affidavit of the said Samuel Ross and A. J. Lewis, taken by them on the 22d of June, 1839, previously to entering upon the performance of their duty as appraisers under the said appeal, to the admission of which affidavit the counsel of the claimants objected. But the court overruled the said objection, and admitted the same in evidence, to the admission whereof the counsel of the claimant excepted, whereupon the said affidavit was read in evidence, (prout affidavit;) afterwards the counsel of the United States gave in evidence the appraisement of the said Ross and Lewis, made under the said appeal, according to the testimony of the several witnesses on behalf of the United States, who had thus examined and appraised the said goods, the value thereof exceeded the price as stated in the invoice in the following proportions respectively, viz: according to the appraisement of the official appraisers, Stewart and Simpson, and of the witnesses, Huntingdon and Callet, 16 per cent.; according to the appraisement of the witnesses, Ross and Lewis, made upon the said appeal, 17 per cent.; and according to the testimony of the witnesses, Siter, Tingley and Churchman, 22 per cent., above the price in the said invoice. Before the examination of each of the said witnesses, an objection was made by the counsel of the claimant to the admission of his testimony, on the ground that his appraisement had not been made in the presence of the jury. The objection was in each case overruled, and an exception was in each case taken by the claimant's counsel to the admission of the testimony.

The counsel of the United States also gave in evidence an affidavit of the claimant, taken at Dobeross, in Saddleworth, on the 15th day of February, 1840, and an invoice thereto annexed, dated Hollingrove, near Leeds, May 28th, 1839, purporting to be another invoice of the goods in question, in which they were stated to have been *purchased* by the claimant on that day from William Buckley & Co., (prout affidavit and invoice.) This affidavit and invoice were proved to be endorsed in the handwriting of the said deceased deputy collector Kern, and it was in evidence that the claimant's attorney and counsel before the issuing of a commission to take testimony in Saddleworth, hereinafter mentioned, had applied on the claimant's behalf to the attorney of the United States for, and had received from him, a copy of the same.

The counsel of the United States produced the invoices of two importations, one made into the port of Philadelphia, the other into the port of New York, of goods exported from England by the claimant, whose affidavit was in each case annexed thereto, dated respectively 23 May, 1839, and 12 June, 1839. These affidavits, made in pursuance of the 4th section of the act of Congress of 1 March, 1823, described the goods in the respective invoices as having been purchased by him, and he deposed to their actual cost. The said invoices and affidavits, and the entries upon which they were respectively entered, were verified, and the signature to each affidavit was proved to be in the claimant's handwriting. The said invoices and affidavits, with the respective entries, were thereupon offered in evidence by the counsel of the United

States, who being asked to state the purpose for which they were offered, stated, that they were offered for the purpose of proving, that when the claimant took the affidavit of 8 June, 1839, annexed to the invoice of the goods in question, he was aware of the characters and forms of the different oaths required by the 4th section of the act of 1823. It was added, that many other export affidavits of the claimant would be given in evidence, wherein he was described as a manufacturer of the goods exported, in like manner as he was described in the export affidavit of 8 June, 1839, which accompanied the invoice and entry of the goods in question. It was also stated by the counsel of the United States, that this evidence was intended as part of the testimony, by which it was expected to prove a fraudulent purpose, on the part of the claimant, in exhibiting to the custom-house the above mentioned affidavit of 15 February, 1840, in which, after the goods had been appraised at the custom-house, they were represented to have been bought by the claimant on 28 May, 1839, contrary to the statement contained in his oath of 8 June, 1839.

Whereupon, the counsel of the claimant objected to the reading in evidence of the said two affidavits of 23 May and 12 June, 1839, but the court overruled the objection, and permitted the same to be read in evidence; to which decision, the claimant's counsel excepted; whereupon the said two affidavits, and the respective entries and invoices to which they appertain, were read in evidence. (Prout entries, invoices, and affidavits.)

The counsel of the United States thereupon offered in evidence several other invoices, affidavits, and entries, in most of which affidavits, the claimant, who was the exporter and owner, described himself as manufacturer of the goods exported; but in some of them, described the goods as having been purchased by him. These documents, after being verified in the same manner as those mentioned under the last exception, were objected to by the claimant's counsel, but were admitted in evidence by the court, (prout)—the counsel of the claimant excepting thereto. They were then read in evidence. One of them was a consignment, by the claimant, of goods by the ship United States to John Taylor, junior, by whom they had been entered at the custom-house at New York, in January, 1839, which contained goods, concerning which, other testimony was afterwards offered, as appears below. There was in every case a discount or deduction of five per cent. from the prices of the goods in these invoices—comprising ends and half ends of cloth, cassimeres, and pilot cloths.

The counsel of the United States offered to prove, by James Boggs, that he had examined the goods in controversy, and that in many of them the list numbers, and silk numbers, and numbers on the present tickets, corresponded; this witness' testimony to be followed by evidence that, according to the course of business in England, the list number was usually affixed by the weaver, and the silk number by the finisher, and that the ticket number, put on by the packer, usually agreed with the silk number; but that the list and silk number did not usually agree, except where the goods remained the property of the original manufac-

turer; to the admission of which testimony of James Boggs, the counsel of the claimant objected, but the court overruled the objection, and admitted the same; to which decision, the claimant's counsel excepted. The said James Boggs testified, that he had examined all the goods in controversy, and that except seven pieces in one package, the silk numbers and ticket numbers agreed throughout; that the list numbers, wherever found, corresponded with the silk numbers, and that there were list numbers on all the goods, except some of the half ends.

George R. Taylor testified, that he had been a manufacturer in England, and was acquainted with the course of business in respect to the said marks; that the list number was the weaver's mark, and the silk number the finisher's; that they did not usually agree, except where the goods were finished in the establishment in which they were woven; and that the ticket number affixed by the packer, usually agreed with the silk number.

The counsel of the United States also gave in evidence the following letters, of the following dates, viz:

16 November, 1839, P. Brady to G. Wolf, collector of Philadelphia.

19 August, "
5 September, "
13 " "
15 " "
21 August, 1840,
14 October, "

} Claimant to P. Brady.—(Prout letters.)

The counsel of the United States offered in evidence an invoice, dated 5 November, 1838, of goods exported from England by the claimant, consigned to order, shipped by the Republic, and entered at the custom-house of New York, by John Taylor, junior, together with the entry at the said custom-house. The said invoice and entry were verified by William C. Gray, a clerk in the said custom-house. The export affidavit, taken in England, was not annexed to the invoice. There was an appearance of some paper having been once attached to it, which was not produced.

The witness Gray testified, that when he first saw the entry and invoice among the files of papers at the custom-house, the export affidavit was not with them, and that the invoice then exhibited the same appearance as at present. He then deposed, that he had made diligent search for the affidavit, but could not find it.

The evidence of this importation, was offered by the counsel of the United States, in connexion with testimony, that a portion of the goods embraced in it, and a portion of the goods embraced in an importation by the United States, which had already been given in evidence, had been examined and appraised by importers, and persons conversant with the value of such goods in England at the dates of the respective invoices, and that the value of the goods by the Republic was 24 per cent. greater, and the value of the goods by the United States 21½ per cent. greater, than the prices mentioned in the respective invoices. The counsel of the claimant objected to any evidence being given of the said importations, or of the value of any of the goods embraced in them; but

the court overruled the said objection, and admitted the testimony offered, to which decision the counsel of the claimant excepted. The testimony was then given conformably to the said offer.

It was testified by importers of, and dealers in, British cloths and cassimeres, that, in England, a discount of five per cent. for difference of measure was usual upon the sale of ends of broadcloth, but that no such discount was ever allowed in the sale of cassimeres or pilot cloths. Some of the witnesses testified that, in their belief, the discount was not allowed, and others testified that it was allowed, on the sale of half ends of broadcloth, such as were contained in the eight cases of the goods in controversy; P. B., 813 to 820. It was also testified, that competent judges of cloths would sometimes differ ten per cent., but not often, and would not ordinarily differ more than five per cent., if so much, in their estimates of the market price or value of them; and that, in the year 1839, a price in the United States of from 38 to 40 cents for the British shilling sterling, or 80 per cent. advance, estimating the shilling at 22 cents, would cover cost and all charges, and 85 per cent. advance would yield a fair profit on cloths or cassimeres imported from England; and that this was a fair price for such articles, according to the ordinary market prices of that season in Philadelphia. The counsel of the United States offered to prove that Davis, Broadbent & Co., factors of the claimant in Philadelphia, had received on consignment from New York, from the claimant, to be sold for his account, of English cloths and cassimeres, which had been entered at the custom-house in New York upon invoices already in evidence, and had sold the same for his account, for prices which exceeded by more than 120 per cent. the prices mentioned in the respective invoices upon which they had been thus entered; to the admission of which evidence the counsel of the claimant objected, but the court overruled the objection, and admitted the said testimony; to the admission whereof the claimant's counsel excepted. Whereupon Elwood Davis, a witness examined on the part of the United States, testified that he was, in 1839, a member of the firm of Davis, Broadbent & Co., commission merchants in Philadelphia, and that the said firm had, in March of that year, received from New York, on account of the claimant, consignments of cloths and cassimeres which they had sold, and for the proceeds of which they had accounted to the claimant. The invoices of the said goods from New York, dated in March, 1839, were produced and verified by the witness, who also produced the sales book of Davis, Broadbent & Co., containing the particulars of the sales of the goods embraced in the said invoices. The said goods corresponded in description, length, and colour, and in the numbers affixed to each piece, with goods which appeared by the invoices and entries at the custom-house of New York, already in evidence, to have been imported by the ships England, George Washington, and United States. Some of these goods had been sold by Davis, Broadbent & Co., at auction, others at private sale. The average sales of the cloths were 134 per cent., and of the cassimeres 124 per cent., above the prices in the invoices, upon which they thus appeared to have been entered at the custom-house, estimating the shilling sterling as equal to 22 cents.

The counsel for the claimant, to maintain the said issue on his part, produced as a witness the said Patrick Brady, who testified that the year 1839, from August to December, was a good season for the sale of pilot cloths and beavers, and that a fair profit upon such goods, in that season, would have been ten, fifteen, or twenty per cent. That certain goods of this description, in packages P. B., 801 to 809, of which the export affidavit had been given in evidence on the part of the United States, were received by the witness on consignment for sale on account of the claimant; that the same were imported by the ship Manchester, and were entered by the witness at Philadelphia, in July, 1839, and, on an examination by the above named appraisers for that port, were valued, some of them ten per cent., and others of them five per cent., above the prices of the invoice in which they were entered, and a discount of five per cent. contained in the said invoice, was disallowed by the said appraisers; that the witness paid the duty on the goods as assessed upon this valuation of the appraisers, and took them out of the custom-house and sold them; that the sale was not affected by the seizure or detention of the goods in controversy; that the sales of the said importation by the Manchester were begun on the 19th of August, and closed on the 14th of December, 1839, and the final result was a loss of $466 to the claimant, estimating the original value at the amount stated in the invoice.

The witness further deposed that he had never received, or seen, any invoice of the goods in controversy in this case, except the one upon which they had been offered by him for entry. The counsel for the claimant, further to maintain the said issue on his part, offered to read the deposition of William Buckley, taken under a commission to Saddleworth; to the reading whereof the counsel of the United States objected, on the ground that it was not in corroboration, but in contradiction, of the entry of the goods in question, inasmuch as the export affidavit of the 8th of June, 1839, above mentioned, was not the affidavit prescribed for the case of goods which had been purchased, as the goods in question were said to have been in the deposition now offered. The court overruled the objection, and permitted the deposition to be read, saying that it would be for the jury to decide how far the testimony was, or was not, in corroboration of the entry. Whereupon the said deposition, with the exhibits thereto annexed, was read in evidence.—(Prout deposition and exhibits.)

The counsel of the claimant having closed his case, the counsel of the United States, in order to contradict the testimony of the said William Buckley, examined as witnesses Louis C. Callet and William H. Scott, each of whom deposed that he had been in England in May and June, 1839, as a purchaser of cloths and cassimeres, and was acquainted with the markets in which the cloths of Saddleworth manufacture, not exported to the United States, were usually disposed of. Neither of them had known of any such variation in the market price as had been testified to by the witness Buckley. Each witness deposed that the prices of that season were steady and uniform, and that on a staple article like cloth or cassimere, a variation of ten per cent. in six months would be an unusually great variation for that market.

The evidence having been closed, the plaintiff's counsel requested the court to instruct the jury, that—

1. The goods having been offered for entry upon an affidavit, under the 8th section of the act of 1823, as goods belonging to the claimant as a manufacturer, or acquired otherwise than in the ordinary mode of bargain and sale; and the claimant never having alleged himself to have become the owner of them by purchase until after they had been appraised and found by the appraisers to be invoiced below their actual market value at the time and place of exportation, the circumstance of his afterwards producing to the officers of the customs the affidavit of another person that he had acquired the goods by purchase, a very short time before their exportation, is probable cause for the prosecution.

2. The last mentioned affidavit of *another person*, if in season for the purposes of the entry, was not a compliance with the requisitions of the 7th section of the act of 1823; and therefore the goods are to be deemed to have been entered, if at all, under the 8th section of that act, on the affidavit accompanying the original invoice of 4th June, 1839.

3. The evidence of William Buckley, under the commission to Sadleworth, so far as applicable to the alleged sale by him to the claimant, is not, "in corroboration of the invoice," within the meaning of the 23d section of the act of 1823, and therefore is not admissible as evidence of any actual cost or price independent of, or distinct from, the market or actual value of the goods at the time and place of exportation.

The learned judge charged the jury as follows:

It appears that the goods claimed in this case were shipped at Liverpool, on board the ship Franklin, and consigned to Patrick Brady of this city, who offered them for entry, presenting the oath of the claimant, which set forth that he was the manufacturer of the goods.

The act of Congress prescribes two forms of oaths on entry. The one of a manufacturer as to the value of the goods—the other of a purchaser as to the invoice containing the actual cost. No discounts should be set forth but such as have been actually allowed.

When these goods arrived, in consequence of information previously received at the custom-house, the officers ordered that all of them should be appraised by the official appraisers. The footing of the invoice was £1,647; the appraisement £1,917, or about 16 per ct. higher than the invoice. This induced the officers to stop the goods. Other appraisements were made; but previously to them, the claimant offered to pay duties on the increased valuation to obtain his goods—his offer was however declined. The goods having been again appraised by merchants, the appraisement was at an average increase of 18 pr. ct. on the invoice price. On the 25th of May, 1840, the claimant appealed from the official appraisement; and, according to the act of Congress, he appointed, as an appraiser on his behalf, Mr. Ross, and the collector appointed Mr. Lewis—the two together appraised the goods on an average 17 pr. ct. above the invoice price. Some time after this an affidavit of Mr. Buckley that the goods were sold by him to the claimant was presented at the custom-house, and detained there, and then the United States filed an information against them.

The United States allege that the appraisements and the affidavits, and the fact of Mr. Buckley's acquaintance with the different forms of oaths, shew his fraudulent intent in this importation—other invoices of the claimant are also given in evidence to shew the same fraudulent design. Fraud is to be judged of by various circumstances. If this were the only case, the presumption might be that there was a mistake; but the United States have presented these various invoices to shew that there was no mistake. They have further shewn the appraisements and the sales of these other importations by James Buckley at an advance from 114 to 140 pr. ct. in the invoice. Whereas 85 pr. ct. advance is a fair profit according to the testimony. These circumstances go to shew intention; because, though the goods may be under invoiced, yet, unless fraud was intended, the under valuation will not work a forfeiture. The United States are only bound in the first instance to prove to the court probable cause. I have no difficulty in saying that the United States have abundantly shewn probable cause—the burthen of proof is hence thrown upon the claimant.

With a view to meet this, he has shewn in one instance, that of his importation by the Manchester, the sales were at a loss. This he contends should go to sustain the fairness of his invoices. He further urges, that the appraisers differ as much as 10 per cent. in their estimates of the value of the goods, and that he had advantages in England for making purchases. These are facts for your consideration. Another charge on the part of the United States is, that the discount of 5 per cent. stated in the invoice to have been made to the claimant, was untrue, and a fraud upon the United States. Witnesses have been called to prove, that this discount is not a usual one upon cloths, and is never made on half pieces or cassimeres. It has also been said by the United States, that if these goods were manufactured by the claimant, no discount should have been claimed by him. The United States further adduce the affidavit of William Buckley, as in opposition to the claimant's entry as a badge of fraud. This they deem they have a right to do.

The act of Congress provides, that no evidence shall be received in favor of the claimant, except in corroboration of his entry. So far as the deposition of William Buckley contradicts that entry, it is not evidence. But it is said, that this difference in the oaths was a mistake of Mr. Buckley. Had he never exported any goods to this country before, that might have been supposed; you will, however, recollect, that the other invoices shew, that the claimants knew the difference between the different forms of oaths. It is said, that, although some of the goods were undervalued, some were not so, and should not be condemned. The law is this—if in any particular package the prices of some of them are undervalued, and some of them are fair, if the whole package has been made up by a false valuation with intent to defraud the revenue, the whole is forfeited. The same is the case with an invoice. Although it may be composed of some packages fairly made up, yet, if the whole invoice has been made up with intent to defraud, the whole invoice will be forfeited. If the cost of the whole invoice offered for entry is made up with intent to defraud, the whole of the goods contained in it are forfeited.